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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/691,901

10/23/2003

Travis S. Carter

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EXAMINER

GRAY, PHILLIP A

ART UNIT

PAPER NUMBER

3767

MAIL DATE

DELIVERY MODE

07/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/691,901

Applicant(s)

CARTER, TRAVIS S.

Examiner

Phillip Gray

Art Unit

3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 16-35 and 37-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16-35 and 37-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 December 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is in response to applicant's communication of 6/20/2007.

Currently amended claims 1-14, 16-35, 37-54 are pending and rejected below.

Response to Amendment (2nd time)

The amendments filed 12/5/2006 and 6/4/2007 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The additions to the **drawings** and the **specification** contain new additions of matter not disclosed in the application as originally filed. Specifically the nozzle of 69 in the drawings is new matter.

Applicant is required to cancel the new matter in the reply to this Office Action. The previous rejections to the drawings are maintained. See below.

Response to Arguments

Applicant's arguments filed 6/4/2007 have been fully considered but they are not persuasive. Applicant's argue that the amendments of the nozzle is "adapted for repeated bending to retain an angle of orientation without kinking or breaking" as well as the conduit tip being "malleable" and retain the selected position.

It is examiners position that the distal tip would be fully capable of being bendable, "malleable" and "adapted for repeated bending to retain an angle of

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orientation without kinking or breaking” (since it is described in the prior art as “Flexible”). Examiner is of the position that the definition of flexible could be bendable, or malleable, or “adapted for repeated bending to retain an angle of orientation without kinking or breaking. Further Examiner is of the position that this “jet nozzle” could be enable for repeat selective positioning (at the very least as rotatable around the conduit 12), and would retain such a position.

Applicant is reminded that during examination, claim limitations are to be given their broadest reasonable reading. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); In re Prater, 415 F.2d 1393, 1404-1405, 162 USPQ 541, 550-51 (CCPA 1969).

The elements disclosed in the prior art of record are fully capable of satisfying all structural, functional, spatial, and operational limitations in the amended claims, as currently written, and the rejection is made and proper. See rejection discussion below. It is recommended that applicant amend the claims to greater define where the applicant's inventions novelty lies.

Claim Objections (2nd time)

Claims 4, 16, 30, 37, 49 are objected to because of the following informalities: the claim subject matter features are not shown in the drawings (two nozzles). Appropriate correction is required. See drawing objection below.

Drawings (2nd time)

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, "the nozzle portion comprises at least two nozzles, each of the at least two nozzles configured to be individually adjustable to a desired position and to retain the desired position", must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4-13, 16-19, 22, 25-28, 30-35, 37-40, 43, 46-20, 53-54 are rejected under 35 U.S.C. 102(b) as being anticipated by Diamond (U.S. Patent Number 5,624,393).

Diamond discloses a surgical irrigation device for use with a surgical tool (10 in figure 1), comprising: an expandable textured sleeve configured for attachment to the tool (16); a flexible tube conduit (12) having a distal tip and a proximal end, the conduit mounted on the sleeve (as shown in figure 1); and a flow control clamping member (18) mounted on the sleeve (11) and associated with the conduit (12) for controlling fluid flow through the conduit, and the distal tip comprises a positionable malleable nozzle portion, and a compressible reservoir bladder (22) with compressing means (hand or gravity). It is examiners position that the distal tip would be fully capable of being bendable, malleable, and is “adapted for repeated bending to retain an angle of orientation without kinking or breaking” (since it is described in the prior art as “Flexible”) and that the sleeve (id above) would be capable of being stretchable (since they are described in the prior art as being “resilient”) Examiner is of the position that the definition of “resilient” could be returning to the original form or position after being bent, compressed, or stretched.

The surgical device of Diamond discloses the clamping member is configured to enable selective clamping of the tube to control volume flow to the nozzle portion (see paragraph at column 2 line 61). Diamond further comprises a connector (24, 16 or connector near element 10) at the proximal end of the conduit.

The Diamond art discloses a surgical irrigation device (Figure 1, 2) for use with a surgical tool, the device comprising: means for holding and releasing fluid (22, 18); means for conducting fluid from the fluid holding and releasing means (22 to 14 by 18); means for releasably attaching the conducting means to the tool (12, 18); and means for controlling flow of fluid through the fluid conducting means (20, 18).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20-21, 23-24, 41-42, 44-45, 51-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diamond in view of McPhee (U.S. Patent Number 5,429,607).

Diamond discloses the claimed invention except for the compressible member comprises an elastomeric syringe bulb urged into a compressed condition by an elastomeric resilient band member. McPhee teaches that it is known to use a compressible member (as shown in figures 1, 4, 9, 12) comprises an elastomeric syringe bulb (10, 12, 16) urged into a compressed condition by an elastomeric resilient

band member (26, 62) as set forth in paragraphs beginning at column 2 through column 3 to provide an elastomeric powered IV actuation device that is convenient to use and inexpensive. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the irrigation system as taught by Diamond with a compressible member comprises an elastomeric syringe bulb urged into a compressed condition by an elastomeric resilient band member as taught by McPhee since such a modification would provide the irrigation system with a compressible member comprises an elastomeric syringe bulb urged into a compressed condition by an elastomeric resilient band member for providing an elastomeric powered IV actuation device that is convenient to use and inexpensive.

Claims 3, 14, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diamond in view of Carlson et al. (US 6,090,356). Diamond discloses the claimed invention except for the "malleable wire attached to a flexible portion of the tube to retain the position and direct fluid flow from the conduit". Carlson teaches that it is known to use malleable wire attached to a flexible portion of the tube as set forth in paragraphs beginning at column 1 line 26 and column 2 line 39 to line 62 to provide the user to "more precisely direct the flow of irrigation fluid ". It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the surgical device as taught by Diamond with a malleable wire attached to a flexible portion of the tube as taught by Carlson since such a modification would provide the surgical device with a malleable wire attached to a flexible portion of the tube for providing the user to "more precisely direct the flow of irrigation fluid ".

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip Gray whose telephone number is (571) 272-7180. The examiner can normally be reached on Monday through Friday, 8:30 a.m. to 4:30 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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KEVIN C. SIRMONS
SUPERVISORY PATENT EXAMINER

Kevin C. Sirmons